

COMMENT LETTER # 4

JANICE MASTERTON

GRASSY RUN HOMEOWNERS' ASSOCIATION

5555 Grassy Run Court
Placerville, CA 95667

July 3, 2006

John D. Webb, Chief
Office of Environmental Services – South
CalTrans North Region
2389 Gateway Oaks Boulevard, Suite 100
Sacramento, CA 95833

Re: Draft Supplemental Environmental Impact Report
Shingle Springs Interchange
Your File: 03-ED-50 EA:0C4700

Dear Mr. Webb:

The Grassy Run Homeowners' Association (GRHA) takes this opportunity to comment on the Draft Supplemental Environmental Impact Report (DSEIR) produced by CalTrans in the above-referenced matter.

Scope of Comments

The rulings of the Third District Court of Appeal and, thereafter, of the Sacramento County Superior Court, require CalTrans, in its DSEIR, to further address two subjects: (i) air quality impacts, and (ii) potential impacts from a smaller project than that originally considered. GRHA's comments set forth in this letter fall, we believe, within the parameters of the second of those subjects.

GRHA is of the view that, as to the "smaller casino" alternative, the courts have mandated a full-scale environmental review of proposals submitted in response thereto, because those alternative proposals would be separate and distinct from the "original hotel/casino" project that was the subject of CalTrans' original EIR. Accordingly, all impacts from the proposed alternatives must be considered and discussed, anew, without reliance by CalTrans upon its considerations and discussions of such impacts, even the same impacts, resulting from the original, different project.

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CalTrans has distinguished (i) a Supplement to an Environmental Impact Report (EIR) from (ii) a different document that it variously calls a Supplemental EIR or a Subsequent EIR. DSEIR pp. 1-1 and 1-2. It quotes Guideline 15163 to the California Environmental Quality Act (CEQA) as permitting a “Supplement” to “contain only the information necessary to make the previous EIR adequate for the project as revised,” while requiring that a “Supplemental” or “Subsequent” EIR (which the DSEIR is) be “a complete EIR which focuses on the conditions described in [Guideline] 15162.” *Id.* The DSEIR, as to the “alternative projects,” fails that test. In particular, GRHA believes that CalTrans has erred in concluding “it was not necessary to supplement all portiosn [sic] of the 2002 Final EIR.” DSEIR, §1-5.

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As to the “smaller casino” alternative, moreover, GRHA believes that CalTrans’ “incorporat[ion] by reference” of previous National Indian Gaming Commission (NIGC) environmental documents (DSEIR §1.2) is improper and ineffective, because those documents deal solely and exclusively with a different-sized project. Further, GRHA believes it to be improper to “tier” an EA¹ document into an EIR, because of the differences in applicable standards required for the two types of documents, and the lesser standards required of the former.

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GRHA concedes that its comments refer to matters that are not direct impacts from the Interchange project. But under CEQA any environmental report must deal not only with direct impacts, but also with indirect impacts, i.e., those impacts that are foreseeable consequences of the project. Because the primary purpose of the Interchange project is to afford access from Highway 50 to a proposed hotel/casino facility of the Shingle Springs Band (Band),² the impacts of that hotel/casino facility are certainly foreseeable.

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Lighting and Visual Pollution

The hotel/casino project, even as downsized, will generate light, both from parking areas and from the casino and possible hotel structures as well. It is apparent

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¹ An EA (Environmental Assessment) is the federal analogue under the National Environmental Policy Act (NEPA) to a Mitigated Negative Declaration (MND) under CEQA. CalTrans has not sought to justify its Interchange Project on the basis of an MND, however; instead, it has properly used the full-scale EIR process. The conclusions reached by CalTrans, however, smack in substance, if not in form, of MND treatment.

² The Band, by complying with the terms of a preliminary injunction issued by the United States District Court, Eastern District of California, is already able to use the Grassy Run roads for (i) access of the Band’s members and non-commercial invitees to the Shingle Springs Rancheria (Rancheria), (ii) access of service providers to the residents of the Rancheria, (iii) access for tribal and other governmental activities, and (iv) access for occasional non-profit educational or cultural programs.

that, by locating the proposed project on the northeasterly side of a hill in order to shield it from visibility from Highway 50 and from homes located on the southerly side of Highway 50, the hotel/casino proponents have elected simply to shift the burden of visibility to Grassy Run. Specifically, the hotel/casino facilities will be in the direct line-of-sight of those parcel owners within Grassy Run whose homes are located on Little Brush Ridge Road, Stones Throw Road, and portions of Reservation Road southerly of the bridge spanning Slate Creek. That line-of-sight visibility has the potential to create vision-pollution to those homeowners to a significant extent.

6 Cont.

Section 5.8 of the Original EIR discusses “Visual Resources.” Nowhere in that discussion in any reference made to visibility from any direction other than Highway 50. The entire focus is upon the Interchange Project itself, and no consideration is given in Section 5.8 to visual pollution from the hotel/casino project.

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Section 5.8-1 of the DSEIR at least acknowledges that there is a potential problem, even if it ignores the reality of the problem. It states:

“Views of the hotel and casino from north of the Rancheria would be partially blocked by woodland on the northwest corner of the development. **The casino may be visible only to parcels due north of the west end of the hotel and casino, if those views are not interrupted by trees,** which they **likely** would be, given the native oak woodland that will be left on the northwest corner of the project site.” (Emphasis supplied.)

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CalTrans then goes on to conclude that no mitigation is required. One wonders how CalTrans officials would react to the potential of bright lights shining into their bedrooms all night long!

The justification for “no mitigation” is that Grassy Run views of the casino would “likely” be interrupted by trees, “given the native oak woodland that will be left on the ... project site.” It strains credulity, however, to think that a construction project of the size of the hotel/casino project, whichever alternative is ultimately selected, would leave intact all of the “native oak woodland.” At the very least, the DSEIR provides not hint as to how that “likely” eventuality might occur.

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It is particularly significant that the upper reaches of Little Brush Ridge Road occupy an elevation higher than that of the proposed hotel/casino, and that residents in those areas would actually be looking down upon the hotel/casino facilities, rather than being level or looking up. That fact renders the “tree interruption” argument of CalTrans even more tenuous as to those residents.

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Moreover, the DSEIR undertakes no discussion whatever concerning other possible mitigation techniques, because of its conclusion that none are needed. For

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example, CalTrans might have discussed, but does not, the possibilities of (i) directional aiming and/or directional shielding of spotlights in the parking lot area to prevent them from shining to the north and northeast in Grassy Run, (ii) tinting of hotel and casino windows to prevent interior light from shining outside, (iii) placement of advertising signs (e.g., neon) in locations that are blocked from view to the north and northeast, etc. When one concludes that no mitigation is necessary, then mitigation need not be discussed. It should be.

11 Cont.

Drainage and Flooding

Just as with the subject of lighting (or visual pollution) in the Original EIR, CalTrans was remarkably silent on the subject of drainage, not from the Interchange itself, but from the hotel/casino project for which it is primarily designed to provide access. Figure 5.13-1 is a map showing, among other things, what is called an "intermittent creek" originating from the south-central portion of the Rancheria, flowing in a northwesterly direction and then turning northeasterly across the north boundary of the Rancheria until its intersection with Slate Creek to the northwest of the Larry Masterton Bridge over Slate Creek (referred to by CalTrans, at page 5.13-10 of its Original EIR, as "the Reservation Road Bridge") shown in red on that map. While CalTrans has discussed the impact of the Interchange project and the hotel/casino project on Slate Creek, it has not done so with regard to the impact of those projects upon the seasonal flowage of that "intermittent creek," and it is that impact which is the subject of this comment.

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CalTrans recognized, in its Original EIR discussion of cumulative impacts at §7.3.11, that "[t]he only project specific drainage impact identified is related to an increase in impervious surfaces, which will result in an increase in flows into culverts." Precisely so. But while CalTrans discussed mitigation actions impacting, among other areas, Slate Creek, it did not discuss the impact of the increase of "impervious surfaces" upon the "intermittent creek" at all. Nor did the discussion of indirect impacts, at §9.2.6, deal with this particular flooding issue. It simply referred, without citation, to the NIGC's conclusion in its EA that the hotel/casino project "is not expected to result in either an on-site or off-site flooding effect," and to the effects of an undescribed "runoff detention facility".

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The EA states (at page 3-6) that "[t]he majority of runoff from the site drains to an unnamed intermittent tributary of Slate Creek. This tributary is directly northeast of the project area and flows generally north. This stream is a vegetated swale in the landscape that is dry most of the year and channels runoff only during periods of precipitation and subsequent dewatering."

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This language, while true, hides the very real fact that the intermittent creek, during winter, already flows to such heights as to overrun and flood a driveway to the

home of one Grassy Run resident, and to flood that resident's swimming pool. This has happened at least twice in approximately fifteen (15) years. And this is before any "increase in impervious surfaces" has occurred. Obviously the problem will be exacerbated by that increase. For identification purposes, the parcel is shown in the Assessor's Office as #319-050-88-100.

Moreover, the intermittent creek flows through a culvert underlying Stones Throw Road, which is the only route of access to the homes of those Grassy Run residents who live on Little Brush Ridge Road. Thus far that culvert has (barely) been able to withstand the flows coming from the Rancheria down the intermittent creek, but any significant increase in those flows from the "increase in impervious surfaces" will call the ability of that culvert to continue doing so into question.

14 Cont.

In this regard, it is meaningful that the EA, upon which the Original EIR relies, expressly states (at page 3-9) that "[t]he Rancheria was not modeled for surface runoff due to its lack of defined boundaries within a drainage basin. The site sits atop multiple drainage divides within steep terrain where flooding is not a significant issue due to a lack of downstream properties and sufficient on-site drainage capabilities. The area currently has no drainage problems and no downstream drainage impediments." Tell that to the owners of the above-referenced parcel!

What does the DSEIR say about all this? Well, at §5.13-1 it acknowledges the obvious by stating that "[increased drainage would result from the over covering of bare soils by the proposed interchange and casino complex." But, based solely on the NIGC's EA conclusion, CalTrans even yet concludes that the discharges will be no greater than those described for the original project, and that therefore the additional discharges "would not result in a significant impact." Nowhere in §5.13 is the "intermittent creek" even mentioned!

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General Comment

Grassy Run is a small community. We have chosen in this letter to focus on limited issues and goals, because we do not have the resources to hire experts to challenge Goliath. We are aware, however, that the County of El Dorado has done and is doing so, and we therefore adopt as our own and incorporate herein by reference each of the matters set forth in the County's comments on the DSEIR.

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Very truly yours,

Janice Masterton, President
For the Board of Directors

COMMENT LETTER #4 RESPONSE

Comment Letter #4 – Grassy Run Homeowners Association

4-1. The comment states that the commenter believes its comments address the Court of Appeal’s requirement that Caltrans analyze the Supplemental EIR’s alternatives analysis. This comment letter also addresses a variety of subjects that are beyond the scope of the Court of Appeal ruling, and therefore beyond the scope of the Supplemental EIR. This is explained in more detail in the following responses.

4-2. The comment appears to assert that the Supplemental EIR’s alternatives analysis may not rely on the analysis of the proposed project. This conflicts with CEQA’s direction that an alternatives analysis should be a comparative analysis relative to the proposed project. CEQA Guideline 15126.6(d). Please see Response 2-2, above, for more detail on this point.

4-3. This comment suggests that it was inappropriate for Caltrans to prepare a Supplemental EIR, rather than a full, new EIR for the alternatives analysis. As explained in Chapter 1 of the Supplemental EIR, a supplemental EIR is appropriate here pursuant to Public Resources Code section 21166, and CEQA Guidelines 15162 and 15163, because it is only necessary to augment (or supplement) specific portions of the 2002 Final EIR in response to the Court of Appeal’s direction. As to the alternatives analysis, as the Supplemental EIR explains, it includes “a comparison of [] impacts to the impacts of the [I]nterchange [P]roject and the hotel/casino project as described in the 2002 Final EIR and the 2001 NIGC EA, *for each topical section included in Chapter 5 of the 2002 Final EIR.*” Supplemental EIR at p.1-5 (emphasis added). Thus, as to the alternatives analysis, the Supplemental EIR includes everything that a new EIR would include.

4-4. This comment asserts that it was improper to incorporate the 2001 NIGC EA into the Supplemental EIR relative to the alternatives analysis, and that it is generally improper to tier between a NEPA document and a CEQA document because the two statutes have different standards and requirements. As to the first assertion, the 2001 NIGC EA is incorporated into and substantially supports the 2002 EIR’s analysis of the Interchange Project. The 2001 NIGC EA also contains detailed and thorough analysis of the casino/hotel project. Before incorporating any of those, Caltrans technical staff reviewed them to confirm their adequacy, generally and under CEQA. In many cases, Caltrans also independently prepared additional technical analyses. As explained in Responses 2-2 and 3-7, above, an alternatives analysis is a comparative analysis vis-à-vis the analysis and impacts of the proposed project. Thus, incorporating and relying on the 2001 NIGC EA’s analysis and description of the proposed hotel/casino project is both proper and necessary here, because the alternatives analysis is directly comparative to that information.

As to the second contention, the Supplemental EIR relies on information and analysis in the 2001 NIGC EA, but it does not rely on that document’s legal conclusions or aspects of that document unique to NEPA. Accordingly, the modest differences in the standards for adequacy of a NEPA document and a CEQA document do not render a CEQA document’s reliance on a NEPA document inappropriate. Indeed, Public Resources Code section 21083.7 and CEQA Guideline 15221 encourage CEQA lead agencies to use NEPA documents to the greatest extent possible.

Further, the appropriateness of incorporating information from and making use of a NEPA document in a CEQA process is beyond the scope of the Court of Appeal's ruling, having been litigated and ruled on in favor of Caltrans' approach by both the trial court and the Court of Appeal. Ruling at 4; Decision at 29-34. Accordingly, this issue is beyond the scope of the Supplemental EIR. Further, this commenter made similar comments on the 2002 Draft EIR and Caltrans responded to those comments in the 2002 Final EIR. 2002 Final EIR at Responses 36-1 and 36-6; *see also* Response 39-3.

4-5. The commenter notes that its comments do not relate to direct impacts of the Interchange Project, and asserts that the impacts of the hotel/casino are reasonably foreseeable and must be addressed as indirect impacts. Caltrans agrees, and both the 2002 EIR and the Supplemental EIR analyze both the direct impacts of the Interchange Project and the indirect impacts resulting from construction and operation of the hotel/casino. *See, e.g.*, 2002 EIR at Ch. 5; Supplemental EIR at Ch. 5. The appropriateness of the structure of the 2002 EIR as it relates to the on-reservation impacts of the hotel/casino is beyond the scope of the Court of Appeal's ruling, as both the trial court and the Court of Appeal have held that the EIR was adequate in this regard. Ruling at 4; Decision at 7-8, 29-34. Accordingly, this issue is beyond the scope of the Supplemental EIR. Further, this commenter made similar comments on the 2002 Draft EIR and Caltrans responded to those comments in the 2002 Final EIR. *See, e.g.*, 2002 Final EIR at Response 36-2.

4-6. This comment raises issues about the Interchange Project's visual impacts analysis. This issue is beyond the scope of the Court of Appeal's ruling, having been decided in favor of Caltrans by both the trial court and the Court of Appeal. Ruling at 20; Decision at 38-39. Accordingly, this issue is beyond the scope of the Supplemental EIR. Further, similar comments were made on the 2002 Draft EIR and Caltrans responded to those comments in the 2002 Final EIR. *See, e.g.*, 2002 Final EIR at Response 39-14.

4-7. This comment refers only to the visual resources analysis in the 2002 EIR. It is beyond the scope of the Supplemental EIR. For the information of the commenter, Caltrans notes that Section 5.8 of the 2002 EIR explained, at page 5.8-2, the scope of the visual resources analysis, and that the visual impacts of the proposed casino and hotel were discussed in the 2002 EIR as indirect impacts at Section 9.2.18. The discussion in section 9.2.18 was based on the 2001 NIGC EA, and that document was incorporated by reference into the 2002 EIR. Comments on these issues were also submitted on the 2002 Draft EIR, and Caltrans responded to those comments in the 2002 Final EIR. 2002 Final EIR at Responses 27-8, 27-15, 39-14, 45-8.

4-8. This comment pertains to the Supplemental EIR's discussion of the visual resource impacts of Alternatives D and E. It includes a lengthy quotation from the Supplemental EIR and a factual statement regarding mitigation, and then asks a rhetorical question, which is not a comment on the Supplemental EIR or the environmental analysis required by the Court of Appeal.

4-9. This comment addresses the Supplemental EIR's discussion of the visual resource impacts of Alternatives D and E. The commenter misstates the reasons stated in the Draft Supplemental EIR for its conclusion that impacts on visual resources would be less than significant. The analysis, which begins on page 5.8-1 of the Draft Supplemental EIR, assessed the visual effects from various vantage points off of the reservation where the general public may potentially view the proposed hotel and casino. Various factors, including the proposed height of the hotel and

casino facilities, as well as intervening barriers such as an existing hill, undisturbed oak woodland, and a woodland ridge all serve to render the potential visual impacts less than significant for both the proposed hotel and casino as evaluated in the 2002 Final EIR (Section 5.8), and for alternatives D and E, which reduce the height and mass of the structures.

The presence of oak woodland is only one of the reasons that the visual impacts are determined to be less than significant. The most significant barrier blocking the view to most of the public is the on-Rancheria hill immediately south of the proposed development that has a peak of 1,603 feet above sea level. This hill is a full 48 feet above the peak of the proposed hotel. The wooded ridge continuing southeastward from the hill to the cutbank on the north side of Highway 50 also serves to reduce visual effects of the proposed facilities. Views of the facilities from the northeast would also be blocked by a wooded ridge within the Rancheria that has a peak elevation of approximately 1,560 feet above sea level, which is 35 feet above the maximum elevation of the casino/parking structure.

The commenter claims that “(i)t strains credulity, however, to think that a construction project of the size of the hotel/casino project, whichever alternative is ultimately selected, would leave intact all of the ‘native oak woodland.’” The analysis did not state that all of the woodland would remain intact. The analysis states that remaining native oak woodland on the northwest corner of the project site would likely assist in obscuring views of parcels to the north of the Reservation. It should be noted that the vast majority of the public views around the project site are those traveling south of the Rancheria along Highway 50. As noted previously, views from this area would be blocked by the existing hill and woodland ridge.

4-10. This comment suggests that residences at higher elevations than the hotel/casino would be affected by light from the casino because they cannot be screened by existing trees. This issue is beyond the scope of the Court of Appeal’s ruling, having been litigated and decided in favor of Caltrans previously by both the trial court and the Court of Appeal. Ruling at 20; Decision at 38-39. Accordingly, this issue is beyond the scope of the Supplemental EIR.

Further, similar comments were made on the 2002 Draft EIR and Caltrans responded to those comments in the 2002 Final EIR. *See, e.g.*, 2002 Final EIR at Response 39-14. That response states that “all lighting will be designed to comply with Caltrans standards that require downcast lighting to avoid spillover to adjacent land uses, and to not cause a safety hazard for traveling motorists. Neither Caltrans nor the BIA recognizes the loss of dark night skies as a significant environmental issue as related to this proposed project.” Because Alternatives D and E would include less development, and therefore less lighting, they would also have even less impact on visual resources and light and glare. Nonetheless, Alternatives D and E would be subject to the same mitigation requirements described above.

4-11. The comment asserts that the Supplemental EIR does not discuss additional visual resource mitigation techniques because no mitigation is required. The comment then suggests that Caltrans should discuss directional shielding and other measures. As explained in Response 4-10, above, the hotel/casino is already subject to measures to minimize or avoid potential light and glare impacts, including directional shielding.

4-12. This comment addresses the discussion and analysis of potential drainage impacts in the 2002 EIR. This issue is beyond the scope of the Court of Appeal’s ruling, having been litigated

previously and decided in favor of Caltrans by both the trial court and the Court of Appeal. Ruling at 20; Decision at 34-36. Accordingly, this issue is beyond the scope of the Supplemental EIR. Further, this commenter made similar comments on the 2002 Draft EIR and Caltrans responded to those comments in the 2002 Final EIR. *See, e.g.*, 2002 Final EIR at Response 36-9.

4-13. This comment is a continuation of Comment 4-12. Please see Response 4-12, above.

4-14. This comment is a continuation of Comment 4-12. Please see Response 4-12, above.

4-15. This comment criticizes the analysis of the drainage impacts of Alternatives D and E in the Supplemental EIR. That analysis relies on the analysis of drainage impacts in the 2001 NIGC EA and the 2002 EIR. As explained in Response 4-12, above, those analyses are beyond the scope of the Supplemental EIR.

4-16. This comment incorporates by reference the comments of El Dorado County (Comment Letter #2). Please see responses 2-1 through 2-38, above, for responses to those comments.